IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 407 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VAGHABHAI FULABHAI KOLI
Versus
STATE OF GUJARAT

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Appearance:
1. Criminal Appeal No. 407 of 1994
MR KR RAVAL for the appellant.
MR HL JANI, APP, for the Respondent.

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CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 08/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant was the accused in Sessions Case

No.110 of 1993 before the learned Additional Sessions Judge, Godhra, at Panchmahals. The charge against him was that at about 11.30 on 20.4.1993, he shot an arrow in the abdomen of deceased-Abhabhai Mathurbhai and caused his death. The incident was alleged to have occurred at the house of the accused himself. The learned Additional Sessions Judge found him guilty of the charge levelled against him and sentenced him to a life term and to pay the fine of Rs.200/-, in default, to suffer simple imprisonment for one month.

2. The prosecution story is to be found in the evidence of the complainant-Budhabhai Mathurbhai (P.W.2). Budhabhai was the son-in-law of the accused. He was married to the daughter of the accused 17 years ago. He originally belonged to village Chatha. The deceased-Abhabhai was his elder brother. After his marriage, he used to live with the accused at village Sagarama. However, the accused used to drive him out and there used to be quarrels between him and the accused. Budhabhai used to go back to his brother's house at village Chatha. However, his brother -Abhabhai used to take him back to village Sagarama and persuade and remonstrate with the accused and leave the complainant back at his house. The incident occurred on 20.4.1993. On that day, at about 11 o' clock, Bhupatsinh and Abhabhai came to give an invitation. They were seated on a cot in the Osari. At that time, the complainant's wife, the accused and his wife were in the house. In the Osari of the house, a separate room was made by Karatha (a kind of partition). There were holes in the partition and one could see through it. After his brother and his nephew had sat down, they prepared tea for them. His nephew-Bhupatsinh had a cup of tea and his brother (Abhabhai) was drinking tea. At that time, the accused shot an arrow through the partition, which wounded his brother on the right side in the abdomen. Budhabhai drew out the arrow, but the arrow-head remained inside. He, therefore, started with his brother for village Chatha. After walking for about 150 metres, they also drew out the arrow-head with a pair of pincers. The accused fled towards the well after shooting the arrow and he was grabbed near the well by Natu Chhagan and Chhagan Moti. After the arrow-head was drawn out, his brother died and his nephew went to village Chatha. He, thereafter, went to Baria Police station and lodged the complaint. The evidence of the Investigating Officer shows that the complaint was recorded at 3.30 in the afternoon on that very day. According to Budhabhai, the accused had a grievance because whenever he went back to his brother's place, his brother used to take him back to place of the

accused.

3. Chanchiben, the daughter of the accused and the wife of Budhabhai has also supported the prosecution evidence, though, according to her evidence, at the time of the incident, she had gone to fetch water and on hearing the cries, ran back and saw her father had already wounded the deceased with an arrow. She may not have seen the actual incident, but, at the same time, according to her evidence, the accused had run away immediately.

4. Bhupatbhai Somabhai (P.W.5) was the nephew of Budhabhai and his deceased brother-Abhabhai. He had gone with Abhabhai to the residence of the accused and he was present at the time of the incident. He has also said that the arrow had been shot by the accused.

5. Chhaganbhai Motibhai (P.W.6) says that on hearing the cries and that the accused was running after inflicting the injury, he came out and grabbed him while he was running through his courtyard.

6. It is also in evidence that the arrow-head of the arrow which has been seized by the complainant was produced before the police and the report of the Serologist shows that it was found to have been stained with blood of the same group as that of the accused.

7. The evidence of Dr. Chandrahas Sikkenvis, who conducted the autopsy, shows that there is a single penetrating wound 1" x 1/2" deep in the abdominal cavity. According to him, the cause of death was shock due to haemorrhage due to penetrating wound over the abdomen. He also said that the wound could have been caused by an arrow and the injury was sufficient to cause death in the ordinary course of nature.

8. Now, the evidence of Budhabhai and his newphew-Bhupatbhai, who were the eye-witnesses, clearly implicates the accused who shot the arrow. Even the daughter of the accused, who came back on hearing the cries, has stated that the arrow had been shot by her father and that her father had immediately run away. Though Budhabhai and Bhupatbhai are subjected to cross-examination, nothing has been elicited to shake their version of the incident. In the circumstances, there is no manner of doubt that it was the accused who shot the arrow which caused the fatal injury. It was contended that the doctor has stated in his cross-examination that if the arrow has not been drawn

out and if the treatment has been given to the deceased at the earliest, death could have been avoided. However, when the arrow entered the abdomen of the deceased, his brother tried to help him and save his life according to his knowledge and understanding. In the circumstances of the case, it cannot be said that the chain of causation was snapped and that it was the act of the complainant which was responsible for the death of the victim.

9. The injury was intentional and sufficient to cause death in the ordinary course of nature. The learned Additional Sessions Judge has, therefore, rightly found the appellant guilty of the offence charged to him and convicted him under Section 302. There is no reason to interfere with the finding of guilty recorded by the learned Additional Sessions Judge. The appeal is, therefore, dismissed.

[ M.C. PATEL, J. ]

[ A. L. DAVE, J. ]

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